

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

Volume II

May 21, 1975 to July 2, 1975

Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

HOUSE

Wednesday, May 21, 1975

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Kathleen Weed of North Wayne.

The journal of yesterday was read and approved.

Papers from the Senate

From the Senate: The following Communication:

THE SENATE OF MAINE
AUGUSTA

May 20, 1975

Honorable Edwin H. Pert
Clerk of the House
107th Legislature
Augusta, Maine
Dear Mr. Pert:

The Senate voted today to Adhere to its action whereby it Failed to Enact Bill, "An Act Granting a Property Tax Exemption for Property Leased by Community Mental Health Centers" (H. P. 480) (L. D. 599).

Respectfully,

Signed:

HARRY N. STARBRANCH
Secretary of the Senate

The Communication was read and ordered placed on file.

From the Senate:

Bill "An Act Relating to School Administrative District No. 53" (S. P. 526) (L. D. 1891) (Approved for introduction by a Majority of the Committee on Reference of Bills pursuant to Joint Rule 10)

Came from the Senate referred to the Committee on Education and ordered printed.

In the House, the Bill was referred to the Committee on Education in concurrence.

On motion of Mr. Rolde of York, the rules were suspended and the members were allowed to remove their jackets for the remainder of the day.

**Reports of Committees
Ought to Pass**

Committee on Natural Resources reporting "Ought to Pass" on Bill "An Act to Clarify the Maine Mining Law to Reform Procedures for Handling of Licenses and Lease Negotiations and to Increase Income from Mineral Operations" (S. P. 405) (L. D. 1308)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed.

In the House, the Report was read and accepted, the Bill read once and assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Health and Institutional Services reporting "Ought Not to Pass" on Bill "An Act Relating to the Maintenance of Vital Records" (S. P. 322) (L. D. 1099)

Report was signed by the following members:

Mr. HICHENS of York
— of the Senate.
Mrs. MORIN of Old Orchard Beach
Messrs. GOODWIN of South Berwick
HENNESSEY of West Bath
CURRAN of South Portland
KENNEDY of Gray
LOVELL of Sanford
SPROWL of Hope

Mrs. LAVERTY of Millinocket
— of the House.
Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Report was signed by the following members:

Mr. BERRY of Androscoggin
— of the Senate.
Mrs. POST of Owls Head
Mr. LaPOINTE of Portland
— of the House.

Came from the Senate with the Minority "Ought to Pass" Report read and accepted and the Bill passed to be engrossed as amended by Senate Amendment "A" (S-170)

In the House: Reports were read.
On motion of Mr. LaPointe of Portland, the Minority "Ought to pass" Report was accepted in concurrence and the Bill read once. Senate Amendment "A" (S-170) was read by the Clerk and adopted in concurrence and the Bill assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Remove Invalidated Language Concerning Abortion from Maine Statutes" (S. P. 484) (L. D. 1614)

Report was signed by the following members:

Messrs. CLIFFORD of Androscoggin
MERRILL of Cumberland
— of the Senate.

Messrs. BENNETT of Caribou
McMAHON of Kennebunk
HOBBINS of Saco
GAUTHIER of Sanford
PERKINS of South Portland
HEWES of Cape Elizabeth
— of the House.

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Report was signed by the following members:

Mr. COLLINS of Knox
— of the Senate.
Mrs. MISKAVAGE of Augusta
Messrs. HENDERSON of Bangor
SPENCER of Standish
HUGHES of Auburn
— of the House.

Came from the Senate with the Majority "Ought Not to Pass" Report read and accepted.

In the House: Reports were read.
Mr. Gauthier of Sanford moved the House accept the Majority "Ought not to pass" Report in concurrence.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I thought there might be a little more discussion on this. The lobbyists are very effective today.

I would like to at least explain why I signed the Minority "Ought to pass" Report on this Bill. The State of Maine law was declared unconstitutional by district court, pursuant to a general Supreme Court decision that these laws are unconstitutional. The Committee did not consider directly whether or not it was in favor of abortions but rather how we ought to go about dealing with laws that are unconstitutional on the books of the State of Maine. This law is now, as far as Maine law is concerned, considered unconstitutional.

Some have argued that this may be only temporary and that maybe some day it

will be found to be constitutional. For that very reason, some of us thought it was unwise to leave it on the books, and I will explain.

If a person were to practice, as they are now, abortions, say a physician, in this state, he is at odds. On the one hand, Maine law says it is against the law; on the other hand, the courts have interpreted this as to be unconstitutional. If a person does perform an abortion and a district attorney in this state takes him to court and appeals this and it turns out that at some point that it is constitutional, then this person has been misled in effect. Our laws, the current practice says that it is unconstitutional. He has accepted that, he or she has acted in good faith and then all of a sudden, because we have this law on the books, he is bad, basically, felt he was acting according to the law, finds now that he isn't and is subject to penalties or whatever.

This general argument can be made, I think, for a lot of laws that are on our books that are declared unconstitutional. If they are unconstitutional, let's not have them on the books. If there ever comes a time when they are declared constitutional, we can make a conscious act to reenact this legislation. But it seems to me, at least, unfair to have people put in the position of not knowing exactly what the law is and, therefore, I would hope you would vote for the pending motion.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: For the first time since January 1, I am about to make a motion. I have not made any motions to try to defeat any bills at all. I don't lobby on bills, but when it comes to this proposition here, I think my track record is a long one. I think we ought to leave things as they are, leave things well enough alone. The nine wisemen can make errors in Washington, and I think they have blundered into this one in the first place. Regardless of that fact, I feel extremely strong about this situation. The word abortion just makes me want to recoil. Mr. Speaker, I move the indefinite postponement of all reports, all papers, all words on this bill, and when the vote is taken, I ask for the yeas and nays.

The SPEAKER: The gentleman from Lewiston, Mr. Jalbert, moves the indefinite postponement of this Bill and all of its accompanying papers.

The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: It is just like the gentleman, Mr. Henderson, who is on the Judiciary Committee, mentioned to you just a few minutes ago. When this was taken up in committee, it was taken on that this law should be taken off the books at the present time. As you have seen in the other body, it was not taken off the books and the vote on this committee assures you that this should not be taken off the books at the present time because the majority voted against it.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Mulkern.

Mr. MULKERN: Mr. Speaker, Ladies and Gentlemen of the House: I would like to see you go along with the gentleman from Lewiston, Representative Jalbert, this morning. I think he has spoken words of wisdom and I am not going to prolong the debate on this bill. I only call your

attention to two handouts which have been handed around to the members of the House today by myself and the good Representative from Livermore Falls, Representative Lynch. They make two points. It says, number one, "The Supreme Court has taken away the rights of the states to protect unborn human life for the entire nine months of pregnancy. The 106th Legislature passed a memorial to Congress asking for a human life amendment by an overwhelming majority.

"L. D. 1614 is an unnecessary bill and directly contradicts the memorial passed by the 106th Legislature asking for the protection of all human life, the unborn, the handicapped and the elderly. As professional nurses, we will continue to place the highest possible premium on the value and dignity of human life and therefore we urge the defeat of L. D. 1614."

As you can see by this, there are quite a few signatures on this material. Also, Representative Lynch's is identical, except for the fact that we are talking about health care personnel here. So the professional nurses and health care personnel throughout the state have gone on record as being opposed to taking this law off the books, and I would go along with the Majority "Ought not to pass" Report on this bill today.

The SPEAKER: The Chair recognizes the gentlewoman from Augusta, Mrs. Miskavage.

Mrs. MISKAVAGE: Mr. Speaker, Ladies and Gentlemen of the House: I signed the Minority "Ought to pass" Report of the committee for the same practical reasons that Mr. Henderson did. Why keep an unnecessary law on the books?

This is a highly emotional issue, strongly lobbied by a group of highly articulate, attractive young women, for whom I have nothing but the greatest respect. However, I didn't gain many brownie points when I said I respect your point of view; I hope you will show some respect for mine.

I feel this is a personal decision for a woman to make, a decision which she will have to live with for the rest of her life. I no more feel I should influence that decision than I would consider telling her what religion she should follow. In keeping with this philosophy, I don't urge members of this House to adopt my position, merely to consider it when they vote.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: I wonder if Maine really means what it says when it adopted the motto "Dirigo", I lead. In many acts of legislation going through this House, we are not leading, we are following. We are following those who are highly vocal in their attempts to disrupt the moral and ethical fibre in this country. Let's leave the statute on our books as an indication that Maine at least feels that it is time for the Supreme Court to recognize that many people in this nation feel entirely different.

And I would recall to you that not too long ago we had a Supreme Court opinion in this state which, if we had accepted, would have changed the financing of public school education, but we did not. We adopted a school finance law that was within the Constitution and the Supreme Court of the United States is periodically renewed, and how do we know but that in a year or two or three there may be an entirely different ruling coming from the Supreme Court.

Let's leave this on the books as an indication that the State of Maine feels that there is some respect in the State of Maine for the unborn.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I signed the Minority Report, the "Ought to pass" Report on this bill, and I did so for one simple reason, and that is that a law on the books which has been declared invalid by the courts is not the proper method for this legislature to state its feelings towards the federal government. This legislature has gone on record in a memorial to the Congress stating its feelings on this issue. By leaving a law on the books which creates a criminal penalty for a doctor who performs an abortion, we place the doctors of this state in an untenable position. On the one hand, they are told that they don't have to be concerned about this law, because it is invalid, it has been declared invalid in toto by the courts and at the same time, we leave a law on the books which says that they are criminals if they perform an abortion.

Well, for most of the doctors, it won't matter because the law is invalid and it has been declared so by the courts. But the very reason that the opponents of this legislation are asking us to leave it on the books means that one doctor is going to be very badly mistreated in this state. The reason they want it left on the books is that the question may be appealed up again, and the court may change its position. Well, if that could happen, a district attorney in this state could decide to prosecute a doctor who felt that he was performing an abortion which was entirely legal and which is legal under the present state of the law, and if the court opinion were reversed, that man would be guilty of a crime for performing an act which we all say that at the present time he has the right to perform. I think it is an irresponsible act of this legislature to leave a law on the books creating a crime and at the same time conceding the fact that it is invalid because of the court decision.

The SPEAKER: The Chair recognizes the gentleman from North Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: Just one point I would like to make, and it is one that I have been making several times here. Why should we give up our constitutional right to make the laws and then have it reversed by another body? I feel that we ought to leave this law on the books and show the rest of the nation how Maine has spoken on this matter.

The SPEAKER: The Chair recognizes the gentleman from Bridgewater, Mr. Finemore.

Mr. FINEMORE: Mr. Speaker, Ladies and Gentlemen of the House: I feel it a privilege this morning to vote with the gentleman from Lewiston, Mr. Jalbert, in voting against this bill and hope you will go along with Mr. Jalbert's motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: As some of the members of the legal profession have already stated, there is a question of constitutionality in regard to this law.

The thing that bothers me is that those in the legal profession have implied that it is

carte blanche unconstitutional. A federal district court has declared it to be unconstitutional. I am rather tired of having subordinate bodies, including the Attorney General's Office and other areas, telling us what is unconstitutional.

Constitutionality depends upon the Supreme Court of the United States, that is the final supreme body, and I will abide by that body, but it has not declared this law to be unconstitutional and if it is appealed to that particular body, they may declare it to be constitutional and if they do, we will be sorry by our act today to take it off the books.

Therefore, I hope you go along with the Majority Report.

The SPEAKER: The Chair recognizes the gentlewoman from Owls Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: I simply would like to clear up one point and that is, from the signatures we have on the list of people who represent the nursing profession, I simply want to make the point that these three sheets of paper do not in any way represent the Maine Association of Nursing or the nursing profession of Maine. If you look it over very carefully, most of the signatures are from people from two communities. They signed this as individuals and that is their right. All I am asking you to do is to vote as individuals and to leave that same right to women who want to make their own choices.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, I would like to pose a question through the Chair to any member who might care to answer. I would like to know exactly what this law says, which we are voting whether or not to leave on the books?

The SPEAKER: The gentleman from Brewer, Mr. Cox, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The law in question provides that it is a crime for anyone to perform or assist in the performance of an abortion unless the abortion is necessary to save the life of the mother, so that any doctor and I believe any nurse who participated in an abortion would be guilty of a crime under this law and the fine is up to \$1,000, I believe, and I am not sure what the jail sentence is, but I believe it is up to three years in jail.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I just want to call your attention to one fact. This present law was written in 1828 and I would suggest that if we are going to keep a law on the books, you ought to get something that is a little more up to date.

The SPEAKER: The Chair recognizes the gentlewoman from Lewiston, Mrs. Berube.

Mrs. BERUBE: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to add my own thoughts. We passed, two years ago here in 1973 legislation which provides for the protection of fetal life. It says, in effect, whenever an abortion procedure results in a live birth, failure to take all reasonable steps to preserve the life and the health of the liveborn person shall subject the responsible party to Maine law governing manslaughter, etc. Now, if we remove the so-called invalidated language from the statutes,

then perhaps this should go also — that this law that we passed 2 years ago, we should also get rid of that perhaps. While we are at it, we could just as well change the statute which recognizes the existence of the unborn young of animals and allows this as goods in a sale.

Perhaps, there is something to be said to conform to the court's ruling, as there obviously are countless arguments between the theological and the biological reasons for keeping or destroying human life, but if we as humans are not subservient to the biological, therefore, we cannot adopt as a conduct as far as concerns human life, which is dictated by criteria, which are strictly scientific or political. I think one thing we must remember and that is that we are all born with free will and this leads us to freedom of choice. They are all great words but there was one word that we always seem to forget and that is, we should equate the word "responsibility".

I think that by now we are all very familiar with what abortion is, whether it be therapeutic, hysterotomy, cesarean, etc., and I don't think we should go into the subject; I think it has been well said before. But I do firmly believe that we should retain on our books the language governing abortion. It is not invalid and never will be and I think we can bring a little reason and common sense to offset the trend toward the faceless and soulless society that we are leading ourselves into.

I am not scared of retention of that word and I don't feel that it will deny anyone their rights. So, with these thoughts in mind, I really urge you, sincerely urge you to support the motion from the gentleman from Lewiston. If a roll call has not been requested, I would so request it.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: Truly, this is a mother's bill. Until a few years ago, I felt that I was the expert on abortions in this State. I dealt with the bent coathangers, the bent spoons, I have held the dying mothers. Surgical instruments have replaced the hanger and the bent spoon and the turpentine but it hasn't cleaned up this procedure.

I urge you today, for the mothers of Maine, to support the gentleman from Lewiston's motion, Mr. Jalbert.

The SPEAKER: The gentleman from Lewiston, Mr. Jalbert, has requested a roll call. In order for the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. If you are in favor, you will vote yes; those opposed will vote no.

A vote of the House was taken and obviously more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the gentleman from Lewiston, Mr. Jalbert, that this Bill and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Berry, G. W.; Berube, Birt, Blodgett, Boudreau, Bowie, Burns, Call, Carpenter, Carroll, Carter, Chonko, Connors, Cote, Curran, P.; Curran, R.; Curtis, Dam, Doak, Drigotas, Dudley, Dyer, Farley, Faucher, Fenlason, Finemore, Flanagan, Fraser, Gauthier, Goodwin, K.; Gould, Hewes, Higgins,

Hobbins, Hunter, Immonen, Jacques, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelleher, Kelley, Laffin, Laverty, LeBlanc, Lewin, Lewis, Littlefield Lunt, Lynch, MacEachern, Mackel, Mahany, Martin, A.; Martin, R.; Maxwell, McBreairty, McMahon, Morin, Mulkern, Nadeau, Peakes, Pelosi, Perkins, S.; Peterson, P.; Pierce, Powell, Raymond, Rideout, Rolde, Rollins, Shute, Silverman, Smith, Snowe, Sprowl, Stubbs, Teague, Theriault, Torrey, Truman, Twitchell, Tyndale, Usher, Webber, Wilfong, The Speaker.

NAY — Bachrach, Bagley, Berry, P. P.; Bustin, Byers, Churchill, Clark, Connolly, Cooney, Cox, Davies, Dow, Durgin, Garsoe, Gray, Hall, Henderson, Hennessey, Hinds, Hughes, Hutchings, Ingegneri, Jackson, Kennedy, LaPointe, Leonard, Lovell, MacLeod, McKernan, Mills, Miskavage, Mitchell, Morton, Najarian, Norris, Perkins, T.; Peterson, T.; Post, Quinn, Saunders, Snow, Spencer, Talbot, Tarr, Tierney, Tozier, Wagner, Winship.

ABSENT — Bennett, Carey, DeVane, Farnham, Goodwin, H.; Greenlaw, Lizotte, Palmer, Strout, Susi, Walker.

Yes, 91; No, 48; Absent, 11.
The SPEAKER: Ninety-one having voted in the affirmative and forty-eight in the negative, with eleven being absent, the motion does prevail.

The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: Having voted on the prevailing side, I now move that we reconsider our action whereby this bill was indefinitely postponed and please vote against me.

The SPEAKER: Mr. Jalbert of Lewiston moves that we now reconsider our action whereby this bill was indefinitely postponed. If you are in favor you will vote yes; those opposed will vote no.

A viva voce vote being taken, the motion did not prevail.

Mr. Birt of East Millinocket presented the following Joint Order and moved its passage: (H. P. 1618)

WHEREAS, there are key people in this State who have committed themselves to making government an informed and responsive institution; and

WHEREAS, one such person known and admired by countless numbers is a lady of rare qualities who was born in Woonsocket, Rhode Island; and

WHEREAS, she has no quarrel with Woonsocket, but has long been irked at the stork for his gross error in navigation; and

WHEREAS, on May 17, 1975, she was awarded an honorary L.L.D. by the University of Maine at Portland-Gorham in recognition of service as State Law Librarian to the courts, Legislature, legal fraternity and people of Maine; and

WHEREAS, she has ever honored the duties incumbent upon her as Law and Legislative Reference Librarian for the State and has discharged that trust with the joy of enriching all; now, therefore, be it

ORDERED, the Senate concurring, that we, the Members of the Senate and House of Representatives of this, the 107th Legislature now assembled, pause for a moment in our deliberations to pay this tribute to Miss Edith L. Hary, our State Law and Legislative Reference Librarian, and to extend, in her honor, the wholehearted thanks of the Legislature for her years of kind and friendly service; and be it further

ORDERED, that Wednesday, the twenty-first day of May, be proclaimed Edith L. Hary Day in the Legislature and the person so named shall be properly recognized, including, but not limited to, a more appropriate certificate of birth reflecting her desired place of birth rather than of record; and be it further

ORDERED, that suitable copies of this Order be prepared and presented to Miss Hary and her dear mother, Lucile, at the proper time in token of the sentiments expressed herein.

The Order was received out of order by Unanimous consent and read.

Thereupon, the Sergeant-at-Arms escorted Miss Hary to the rostrum amid applause, the members rising.

The SPEAKER: The Chair is pleased to present to Edith a new birth record, which indicates that she is not a Rhode Island native, is now Camden and I know, Edith, that you share with me — this has been officially issued by the Department of Health and Welfare, which is responsible for such matters for the State of Maine and on behalf of the Department of Health and Welfare and Mr. LaBrack, I present to you a certificate of birth. (Prolonged Applause)

Miss HARY: Thank you very much indeed. You know there is one good thing about babies, they can't speak. This has really been a tremendously exciting week for me, as you can imagine, and to have you share it with me, my cup runs over. Thank you so much.

The SPEAKER: Before you leave, Edith, I would like to read a letter which has come from the Governor addressed to you: "Let me join with the Legislature in paying tribute to your years of outstanding service to the State of Maine. Too seldom do we acknowledge the day-to-day contributions of dedicated State employees. I am proud there are people like you in State service in Maine. Thank you sincerely in behalf of the people of Maine for all you have done. I wish you well on this day that has been designated in your honor as well as on future days. Yours very truly, James B. Longley, Governor."

Also, the Speaker would be pleased to recognize in the balcony your mother, Mrs. Lucile Hary and Col. and Mrs. Walter Smith of Dallas who are here visiting. Would you please stand and be recognized by the members of the House. (Applause)

Thereupon, the Sergeant-at-Arms escorted Miss Hary from the House amid prolonged applause, the members rising.

Thereupon, the Joint Order received passage and was sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" as amended by COMMITTEE Amendment "A" (S-131) on Bill "An Act Concerning Landlord-Tenant Relationship in Mobile Home Parks" (H. P. 432) (L. D. 1418)

Report was signed by the following members:

- Mr. CORSON of Somerset of the Senate.
- Messrs. FAUCHER of Solon
- COTE of Lewiston
- PERKINS of Blue Hill
- SHUTE of Stockton Springs
- HUNTER of Benton
- CAREY of Waterville
- JOYCE of Portland
- BURNS of Anson